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(27,362)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 607.

MICHAEL MAGUIRE AND C. S. MAGUIRE, PLAINTIFFS IN ERROR,

vs.

TIMOTHY A. REARDON ET AL., AS COMMISSIONERS, CONSTITUTING THE BOARD OF PUBLIC WORKS OF THE CITY AND COUNTY OF SAN FRANCISCO, ET AL.

IN ERROR TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE FIRST APPELLATE DISTRICT, DIVISION ONE.

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S. F. No. 8925.

In the Supreme Court of the State of California, Division Two.

1 Civ. 2809.

MICHAEL MAGUIRE and C. S. MAGUIRE, Plaintiffs and Appellants,

vs.

TIMOTHY A. REARDON, ADOLPH JUDELL and DANIEL G. FRASER, as Commissioners Constituting the Board of Public Works of the City and County of San Francisco; John P. Horgan, as Chief Building Inspector; John Doe, James Doe and William Doe, and City and County of San Francisco (a Municipal Corporation), Defendants and Respondents.

Transcript on Appeal from the Judgment of the Superior Court of the State of California in and for the City and County of San Francisco.

Honorable Geo. E. Crothers, Judge.

Andrew G. Maguire, J. F. Riley, Pacific Building, San Francisco, Attorneys for Appellants.

George Lull, City Attorney, City and County of San Francisco; Maurice T. Dooling, Jr., Assistant City Attorney, City and County of San Francisco, City Hall, San Francisco, Attorneys for Respondents.

Filed Nov. 6, 1918. B. Grant Taylor, Clerk, by —— ——, Deputy.

1 S. F. No. —.

In the Supreme Court of the State of California.

MICHAEL MAGUIRE and C. S. MAGUIRE, Plaintiffs and Appellants,

vs.

TIMOTHY A. REARDON, ADOLPH JUDELL and DANIEL G. FRASER, as Commissioners Constituting the Board of Public Works of the City and County of San Francisco; John P. Horgan, as Chief Building Inspector; John Doe, James Doe and William Doe, and City and County of San Francisco (a Municipal Corporation), Defendants and Respondents.

Transcript on Appeal from the Judgment of the Superior Court of the State of California in and for the City and County of San Francisco.

Honorable Geo. E. Crothers, Judge.

2 In the Superior Court of the City and County of San Francisco, State of California, Dept. No. 14.

No. 85391.

MICHAEL MAGUIRE and C. S. MAGUIRE, Plaintiffs,

vs.

TIMOTHY A. REARDON, ADOLPH JUDELL and DANIEL G. FRASER, as Commissioners Constituting the Board of Public Works of the City and County of San Francisco; John P. Horgan, as Chief Building Inspector; John Doe, James Doe and William Doe, Defendants.

Complaint for Injunction.

Plaintiffs complain of defendants and for cause of action allege:

I.

That both plaintiffs are now, and at all times herein mentioned were citizens of the United States of America and of the State of California, and are now and at all said times were, residents of the City and County of San Francisco, State of California.

3 II.

That defendants, Timothy A. Reardon, Adolph Judell and Daniel G. Fraser, are now and have been for more than one year last past the duly qualified and acting commissioners of the Board of Public

Works in and for the City and County of San Francisco, State of California, and that as such commissioners at all said times herein mentioned they have constituted and do now constitute the Board of Public Works of the City and County of San Francisco. Said John P. Horgan is their chief building inspector. The defendants John Doe, James Doe and William Doe are sued herein by fictitious names; and petitioners pray that when their true names are ascertained the same may be inserted herein in lieu of said fictitious names.

III.

That plaintiffs are now and have been during all times hereinafter mentioned the owners in fee simple absolute of that certain parcel of real estate, situate, lying and being in the City and County of San Francisco, State of California, and bounded and described as follows, to wit:

Commencing at the point forming the intersection of the southerly line of Hayes street with the easterly line of Van Ness
4 avenue; running thence southerly on the easterly line of Van Ness avenue one hundred and twenty (120) feet; thence at right angles easterly one hundred (100) feet; thence at right angles northerly one hundred and twenty (120) feet, and thence at right angles westerly and along said southerly line of Hayes street one hundred (100) feet to the point of commencement. Being part of Western Addition Block 69 according to the official maps of the City and County of San Francisco.

IV.

That heretofore, to wit, in or about the month of May, 1906, and by and with the consent and permission of the Board of Public Works of said City and County of San Francisco, and of the City and County of San Francisco, there was constructed and erected upon the said described parcel of real estate a substantial one-story wood building, containing nine stores, known and designated as numbers 145 and 147 Hayes street and numbers 130-132-134-136-138-140-142-144 Van Ness avenue, at an expense of twelve thousand (12,000) dollars, and that ever since said time the said building has been and now is upon the said lot of land above described and constitutes
an improvement thereon. That said building has been leased
5 by plaintiffs to and is now occupied by tenants and is used for lawful business purposes, the tenants in said nine stores being engaged in the sale of goods, wares and merchandise, the automobile repair business, carpenter work, etc., and all duly licensed by the said city and county to conduct said businesses in said stores; and said building yields at this time a substantial monthly rental. That said building is of great value and is in a good and tenantable condition and is fit and proper for the purposes for which it was designed and for which it is occupied; and that the City and County of San Francisco has ever since the construction thereof, as aforesaid, assessed said building and taxed the same as property, and that

the said improvements are now assessed and now taxed as property by said City and County of San Francisco, and that plaintiffs have for over ten years last past paid all taxes levied and assessed thereon as they have become due; that said building has been assessed for the present fiscal year, and plaintiffs will be compelled to pay the taxes for the present fiscal year now due and payable, under penalty of the sale to the State of said property.

V.

That said building is assessed for taxes by the City and County of San Francisco for the present fiscal year for 1917-1918 and
6 the taxes thereon for said year are a lien upon the real estate above described and must be paid by said plaintiffs.

VI.

That the said City and County of San Francisco has since the erection of said building above described erected and maintained and used, and is now maintaining and using in the same district or fire limits (referred to in the alleged ordinance hereinafter set forth) in and within which said building belonging to plaintiffs is situated, wooden buildings.

VII.

That on October 24, 1917, the said commissioners constituting the said Board of Public Works did, at a meeting of said board, regularly held, adopt a so-called resolution in words and figures as follows:

Resolution 55734, Second Series.

Resolved, that chief building inspector John P. Horgan be, and is hereby directed to serve notices upon the parties responsible for the shacks at the southeasterly corner of Van Ness avenue and Hayes street known as 145 and 147 Hayes street, and 130, 132, 134, 136,
7 140, 142 and 144 Van Ness avenue, to raze these buildings within 5 days from the date of the service of notices; also that said chief building inspector be and is hereby requested to file immediately with the Board of Public Works an estimate of the cost of razing these shacks.

Adopted October 25, 1917, by the following vote:

Ayes: Commissioners Judell, Fraser and Reardon.

D. R. S.

VIII.

That thereafter and on October 29, 1917, said commissioners, so constituting the said Board of Public Works, did cause to be served on each of the said plaintiffs a written notice in words and figures as follows, to wit:

Office of Board of Public Works,

San Francisco, Cal., Oct. 29, 1917.

To the Owner or Owners of that Certain Building or Structure Maintained on the lot situated at the southeasterly corner of Van Ness avenue and Hayes street in the City and County of San Francisco, and fronting upon both of said named streets:

You are hereby notified that under and by virtue of the authority and direction provided in an ordinance of the City and County of San Francisco, approved May 8, 1917, and entitled, "Ordinance No. 4170, new series, amending Ordinance No. 1008, new series, known as "The Building Law", approved December 22, 1909, by
8 adding thereto a new section to be numbered, "301-a", the Board of Public Works of said city and county will demolish and remove that certain building or structure owned and maintained by you, as the owner or owners thereof, on the lot situated at the southeasterly corner of Van Ness avenue and Hayes street in said city and county and fronting upon both streets, upon the failure of you, as such owner or owners, to demolish and remove the same within five days from the service of this notification.

A copy of the said ordinance is hereto attached for reference by you to the provisions thereof.

[SEAL.] BOARD OF PUBLIC WORKS OF THE CITY AND COUNTY OF SAN FRANCISCO,
By JOHN P. HORGAN,
Chief Building Inspector.

Served upon C. S. Maguire on the 29 day of October, 1917, by Louis Bailey, Inspector of Buildings.

Attached to said notice was a copy of said ordinance referred to in said notice which is in words and figures as follows:

Bill No. 4515.

Ordinance No. 4170 (New Series).

Amending Ordinance No. 1008 (new series) known as "The Building Law", approved December 22, 1909, by adding
9 thereto a new section to be numbered "301a".

Be it ordained by the People of the City and County of San Francisco as follows:

Section 1. A new section is hereby added to Ordinance No. 1008 (new series) known as "The Building Law" to be numbered 301a to read as follows:

"Section 301a. It shall be unlawful for any person, firm, company or corporation to erect, place or maintain any wooden building

or structure of any kind whatsoever in that portion of the City and County of San Francisco described in section 3, part 2 hereof as the Fire Limits".

It is hereby made the duty of the Board of Public Works to enforce the provisions of this section and said Board of Public Works is hereby authorized and directed to demolish and remove any building or structure affected by this section upon the failure of the owner or owners thereof to comply with the terms of this section; and the cost of said demolition and removal shall constitute a first lien on said building or structure and material thereof.

Ordinance No. 1139 (new series) approved April 12, 1910, is hereby repealed.

Finally Passed—Board of Supervisors, San Francisco, May 7, 1917.

10 Ayes: Supervisors Brandon, Deasy, Gallagher, Hayden, Hilmer, Hocks, Hynes, Kortick, Lahaney, McLeran, Mulvihill, Nelson, Nolan, Power, Suhr, Walsh, Welch, Wolfe.

J. S. DUNNIGAN,
Clerk.

Approved, San Francisco, May 8, 1917.

JAMES ROLPH, JR.,
Mayor.

IX.

That on the same day, namely, October 29, 1917, said commissioners did cause to be served on each of the tenants of plaintiffs occupying said nine stores, a written notice in words and figures as follows:

City and County of San Francisco,

Department of Public Works,

Bureau of Building Inspection.

To the tenant or tenants of building and premises situate on the east line of Van Ness Ave., south of Hayes street and known and numbered as 134 Van Ness avenue *street* of the city and county of San Francisco:

You are hereby notified that the owner of the above described premises has been notified to demolish and remove said building or structure within five days, and in accordance therewith you will take whatever steps you deem necessary for the protection of
11 your property upon said described premises before such demolition and removal.

BOARD OF PUBLIC WORKS,
By JOHN P. HORGAN,
Chief Building Inspector.

X.

That said alleged Ordinance No. 4170 above set forth is unconstitutional in that it is discriminatory, in that it makes unlawful the erection, placing or maintaining of a wooden building, but does not make unlawful the erection, placing or maintaining of buildings of canvas, or papier maché or more inflammable and unsafe materials than wood, and provides for the taking of property and the destruction and deprivations and divesting of vested rights without due or any process of law in violation of the provisions of section 1, article XIV of the Constitution of the United States of America and in violation of the provisions of the Constitutions of the United States of America and of the State of California and further as being retroactive and impairing the obligations of contracts and further that it is unreasonable.

XI.

That the said Board of Public Works has threatened that it will immediately upon the termination of the five days mentioned
12 in said notice, to wit, on November 3, 1917, or immediately thereafter, and it does intend to and will, as it has so threatened, and at the time above stated, through its employees, servants and deputies or contractors forcibly enter on the said lot of land and into the said building and stores of these plaintiffs and that they will then and there forcibly remove the plaintiffs' tenants and their goods, wares and merchandise therefrom, and throw the same in the public street, and that they will furthermore, then and there wantonly and maliciously demolish and remove the said building and the material out of which it has been erected, and will make the same unfit for occupation or for the transaction of business, and will thereby deprive these plaintiffs and their said tenants of the use, rents, issues and profits of the same; and that thereby they will irreparably damage these plaintiffs in their said property and will prevent these plaintiffs from keeping their contracts and agreements with their said tenants for the peaceable use and enjoyment of the same as the lessees of plaintiffs and will cause great and irreparable damage to plaintiffs.

XII.

That the said defendants, Board of Public Works, and its employees and agents are proceeding and do intend to proceed in the
13 said matter of the demolition and removal of the said building and the ejectment of the tenants of plaintiffs and the destruction of the goods, wares and merchandise of said tenants, and the ruining of the businesses of said tenants wholly without any warrant or process of law, but on their own initiative; that they do intend to and will deprive plaintiffs and their tenants of their said property without due or any process of law to the irreparable damage of plaintiffs and of each of them, as hereinabove alleged. That said

acts so threatened to be done will be done unless restrained by this court.

XIII.

Petitioners have no plain, speedy or adequate remedy at law in the premises; that said acts, if permitted, will work great and irreparable injury to petitioners and to each of them.

That it is proper that a writ of injuncion restraining said defendants, their and each of their agents, employees, servants and contractors from demolishing or removing said building or any part thereof, and from interfering with the plaintiffs' possession and enjoyment of said building or of any part thereof, be issued.

14

XIV.

Wherefore these plaintiffs pray for the judgment and decree of this court restraining and enjoining the said defendants, their agents, employees, servants, contractors and deputies and each of them from carrying out their said intentions and purposes of demolishing and removing the said building on said lot of land of these plaintiffs or any part thereof, or to dispossess plaintiffs or their tenants therefrom or from any part thereof, and enjoining them and restraining them and each of them from entering thereon for any such purpose, and that pending this action a temporary restraining order issue preventing and restraining them and each of them from demolishing and destroying or removing or injuring or taking down the said building on said lots of land or any part thereof, or to dispossess plaintiffs or their tenants therefrom; and that they show cause before this court at a specified time and place why a temporary injunction should not issue; that plaintiffs have such other and further relief as to this court may seem just and proper in the premises, and that they have judgment for their costs.

ANDREW G. MAGUIRE,
J. F. RILEY,
Attorneys for Plaintiffs.

15 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

C. S. Maguire, being first duly sworn, deposes and says that he is one of the plaintiffs in the action above named and that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information or belief and that as to those matters he believes it to be true.

C. S. MAGUIRE.

Subscribed and sworn to before me this 1st day of November, 1917.
[SEAL.]
JOHN L. MURPHY,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Filed Nov. 1, 1917. H. I. Mulcrevy, Clerk, By L. J. Welch, Deputy Clerk.

Office of the Sheriff of the City and County of San Francisco.

I hereby certify that I received the annexed summons on the 1st day of November, A. D. 1917, and personally served the same on the 13th day of December, A. D. 1917, on the City and County of San Francisco, the defendant therein named, by delivering to
16 James Rolph, Jr., Mayor of the City and County of San Francisco, the said defendant, personally in the City and County of San Francisco, State of California, a copy of said summons attached to a copy of the complaint in said action.

Dated at San Francisco, this 13th day of December, A. D. 1917.

THOS. F. FINN,
Sheriff.
By W. J. HEFFERNAN,
Deputy Sheriff.

OFFICE OF THE SHERIFF OF THE CITY AND COUNTY OF SAN FRANCISCO, *ss:*

I hereby certify that I received the annexed summons on the 1st day of November, A. D. 1917, and that I personally served the said summons and the copy of the complaint therein referred to, upon the hereinafter named defendants, personally, in the County of San Francisco, State of California, by delivering to and leaving with each of said hereinafter named defendants a copy of said summons and a copy of said complaint at the time set opposite their names, respectively.

Name of defendant served.	Time of service.
D. G. Fraser	5 p. m. Nov. 1st 1917
T. A. Reardon	9:30 a. m. Nov. 2nd 1917
A. Judell	9:40 " " " "
J. P. Horgan	9:27 " " " "

17 Dated at San Francisco, this 2nd day of November, 1917.

THOS. F. FINN,
Sheriff.
By GEO. W. DILLON,
Deputy Sheriff.

18 [Title of Court and Cause.]

Amended Answer to Complaint.

Come now the defendants Timothy A. Reardon, Adolph Judell, Daniel G. Fraser, John P. Horgan, and City and County of San Francisco, and by leave of court first had and obtained file this amended answer, and by way of answer to the complaint on file herein admit, allege and deny as follows:

I.

Answering the second paragraph numbered "III" in said complaint defendants deny that said frame building referred to in said paragraph was constructed and erected or constructed or erected by and with or by or with the consent and permission or consent or permission of the Board of Public Works of the City and County of San Francisco, and of the City and County of San Francisco, or of either or any of them.

Further answering said second paragraph numbered "III" defendants deny that said building is of great or any value, and
19 deny that it is in good and tenantable or good or tenantable condition and is fit and proper or fit or proper for the purposes for which it was designed and for which it is occupied or for any purpose or use whatsoever or at all.

II.

Answering paragraph X of said complaint defendants deny that said Ordinance No. 4170 (new series) is unconstitutional for the, or any of the, reasons in said paragraph set out, or otherwise or at all, and deny that it is discriminatory, in that it makes unlawful the erection, placing or maintaining of a wooden building, but does not make unlawful the erection, placing or maintaining of buildings of canvas or pap-er maché or more inflammable and unsafe materials than wood, or otherwise or at all; deny that it provides for the taking of property, and the destruction or the destruction, and deprivations or deprivations, and divesting or divesting of vested rights without due or any process of law in violation of section 1, article XIV of the Constitution of the United States of America and in violation or in violation of the or any provisions or provision of the Constitutions of the United States of America and of the State of California, or either of them; and deny that it is unconstitutional as be-
20 ing retroactive and impairing or impairing the obligations of contracts; and deny that it is unreasonable.

III.

Answering paragraph XI of said complaint, defendants deny that said Board of Public Works, through its employees, servants and deputies or contractors or any of them, or otherwise, do intend or will forcibly enter on the said lot of land and into the said building and stores or building or stores of plaintiffs, and deny that they will forcibly or otherwise remove the plaintiffs' tenants and their goods, wares and merchandise or either or any of them therefrom, and deny that they will throw the same or either or any of them in the public street. Defendants further deny that they will wantonly and maliciously or wantonly or maliciously wreck, demolish and destroy, or wreck or demolish or destroy the said building and the material or the material out of which it has been erected, but defendants admit in this behalf that they intend to and will, unless restrained by this

honorable court, proceed to demolish and remove the said building under the authority vested in them by Ordinance No. 4170 (new series) of the Board of Supervisors of the City and County of San Francisco, hereinafter pleaded and set forth. Defendants further deny that they will thereby or at all cause great and irrepa-
21 rable or great or irreparable damage, or any damage whatsoever.

IV.

Answering paragraph XII of said complaint, defendants deny that said defendants, Board of Public Works, and its agents and employees or agents or employees or any of them are proceeding and do or do intend to proceed in the destruction of said building wholly or at all without any warrant or process of law, and deny that they or any of them are proceeding or intend to proceed on their own initiative or without the plaintiffs having had any day in court, or any opportunity to make any defense or showing whatsoever; and deny that they do intend and will or will deprive plaintiffs of their said property without due process of law or to their irreparable or other damage or to the irreparable or other damage of any of them. In this behalf defendants allege that they and each of them intend to and will proceed under the authority vested in them by said Ordinance No. 4170 (new series) and not otherwise.

V.

Answering paragraph XIII of said complaint, defendants deny that it is proper that a writ of injunction be issued restraining
22 defendants, their and each of their agents, employees, servants and contractors, or any of them, from demolishing or removing said building or any part thereof, and from interfering or from interfering with plaintiffs' possession and enjoyment or enjoyment of said building or of any part thereof.

VI.

Further answering the allegations of said complaint defendants allege that the Charter of the City and County of San Francisco now provides, and at all the times herein mentioned has provided in subdivision 5 of section 1 of chapter II of article II thereof, as follows, to wit:

Section 1. Subject to the provisions, limitations and restrictions in this Charter contained, the Board of Supervisors shall have power:
* * *

5. To fix the limits within which wooden buildings or structures shall not be erected, placed, or maintained, and to prohibit the same within such limits. Such limits when once established shall not be changed except by extension."

Pursuant to the power in them vested by this provision of the

Charter, and long prior to the construction of said frame building herein referred to, the Board of Supervisors of the City and
23 County of San Francisco duly and regularly adopted and enacted an Ordinance No. 1198. Said ordinance was duly and regularly approved and became a law on May 5, 1904, and said ordinance was entitled:

"Defining the Fire Limits of the City and County of San Francisco."

Said ordinance was and remained in full force and effect until July 5, 1906. Section 1 of said Ordinance No. 1198 read and provided as follows:

"Section 1. The fire limits shall be bounded by a line commencing at the intersection of the shore line of the Bay of San Francisco with the easterly end of Greenwich street; running thence westerly along the center line of said Greenwich street to its intersection with the center line of Sansome street; thence southerly along the center line of Sansome street to its intersection with the center line of Broadway; thence westerly along the center line of Broadway to the center line of Virginia Place; thence southerly along the center line of Virginia Place to its intersection with the center line of Pacific street; thence westerly along the center line of Pacific street to the center of the crossing of Pacific and Powell streets; thence southerly along the center line of Powell street to the center of the
24 crossing of Powell and Sacramento streets; thence easterly along the center line of Sacramento street to the center of the crossing of Sacramento and Stockton streets; thence southerly along the center line of Stockton street to a point distant one hundred and thirty-seven and one-half (137½) feet northerly from the northerly line of Bush street; thence westerly parallel with Bush street on a line distant one hundred and thirty-seven and one-half (137½) feet northerly from the northerly line of Bush street to the center line of Van Ness avenue; thence at right angles southerly along the center line of Van Ness avenue to the intersection of the center line of Fell street; thence westerly along the center line of Fell street to the center of the crossing of Fell and Franklin streets; thence southerly along the center line of Franklin street to the center of the crossing of Franklin and Page streets; thence westerly along the center line of Page street to the center of the crossing of Page and Gough streets; thence southerly along the center line of Gough street to its intersection with the center line of Market street; thence southerly and westerly along the center line of Market street to Valencia street; thence southerly along the center line of Valencia street to the center line of the crossing of Valencia and Hermann
25 streets; thence at a right angle easterly along the center line of Hermann street to a point one hundred and forty-four (144) feet from the easterly line of Valencia street; thence extending in a northerly and easterly direction on a radius of three hundred and ninety-six and eight one-hundredths (396.08) feet to the center line of Stevenson street if produced through private property and the center line of Stevenson street to the westerly line of Brady street; thence diagonally in an easterly direction across Brady street

to the intersection of the east line of Brady street and the center line of Stevenson street produced and Stevenson street; thence along the center line of Stevenson street in a northeasterly direction to the center line of Twelfth street; thence southeasterly along the center line of Twelfth street to the center line of West Mission street; thence in a northerly and easterly direction along the center line of West Mission street and Mission street to the center of the crossing of Mission and Ninth streets; thence in a southerly and easterly direction along the center line of Ninth street to the center of the crossing of Ninth and Minna streets; thence in a northerly and easterly direction along the center line of Minna street to Sixth street; thence in a southerly and easterly direction along the center line of Sixth street to the center of the crossing of Sixth and Howard streets; thence in a northerly and easterly direction along the center line of Howard street to the center of the crossing of Howard and First streets; thence in a southerly and easterly direction along the center line of First street to the center of the crossing of First and Folsom streets; thence easterly along the center line of Folsom street to Steuart street; thence in a northerly and westerly direction along the center line of Steuart street to a point one hundred and eighty-three (183) feet and four (4) inches northerly from the northerly line of Folsom street; thence easterly through private property to the waters of the bay; thence along the shore line of the waters of the bay in a northerly and westerly direction to the point of commencement."

Subsequently said Board of Supervisors duly and regularly adopted and enacted an Ordinance No. 31 (new series). Said ordinance was duly and regularly approved and became a law on July 5, 1906; and said ordinance was entitled:

"Regulating the Construction, Erection, Enlargement, Raising, Alteration, Repair, Removal, Maintenance, Use and Height of Buildings; Regulating Character and Use of Materials in and for Buildings; Establishing Fire Limits, and Repealing All Ordinances in Conflict With This Ordinance."

Said Ordinance No. 31 (new series) in section 3 thereof reenacted and continued in full force and effect section 1 of Ordinance No. 1198, and said section 3 of Ordinance No. 31 (new series) remained in full force and effect until December 22, 1909. Thereafter said Board of Supervisors duly and regularly adopted and enacted an Ordinance No. 1008 (new series). Said ordinance was duly and regularly approved and became a law on December 22, 1909, and said ordinance was entitled:

"Regulating the Construction, Erection, Enlargement, Raising, Alteration, Repair, Removal, Maintenance, Use and Height of Buildings; Regulating Character and Use of Materials in and for Buildings; Establishing Fire Limits, and Repealing all Ordinances in Conflict with this Ordinance."

Section 3 of said Ordinance No. 1008 (new series) has never been repealed and has been ever since said December 22, 1909, and now is in full force and effect. Said section 3 of said Ordinance No. 1008

(new series) at all times read and provided and now reads and provides as follows:

"Section 3. That portion of the City and County of San Francisco within the boundary lines in this section hereinafter set forth shall be known as the fire limits within which it shall be unlawful to erect or construct frame or wooden buildings, or to alter, enlarge, repair, add to or build upon any building or buildings except as in this ordinance otherwise provided, viz:

The fire limits shall be bounded by a line commencing at the intersection of the shore line of the Bay of San Francisco with the easterly end of the center line of Greenwich street; running thence westerly along the center line of said Greenwich street to its intersection with the center line of Sansome street; thence southerly along the center line of Sansome street to its intersection with the center line of Broadway; thence westerly along the center line of Broadway to the center line of Cordelia street; thence southerly along the center line of Cordelia street to its intersection with the center line of Pacific street; thence westerly along the center line of Pacific street to the center of the crossing of Pacific and Powell streets; thence southerly along the center line of Powell street to the center of the crossing of Powell and Sacramento streets; thence easterly along the center line of Sacramento street to the center line of the crossing of Sacramento and Stockton streets; thence southerly along the center line of Stockton street to a point distant one hundred and thirty-seven and one-half (137½) feet northerly from the northerly line of Bush street; thence westerly parallel with Bush street on a line distant one hundred and thirty-seven and one-half (137½) feet northerly from the northerly line of Bush street to the center line of Van Ness avenue; thence at right angles southerly along the center line of Van Ness avenue to the intersection of the center line of Fell street; thence westerly along the center line of Fell street to the center of the crossing of Fell and Franklin streets; thence southerly along the center line of Franklin street to the center of the crossing of Franklin and Page streets; thence westerly along the center line of Page street to the center of the crossing of Page and Gough streets; thence southerly along the center line of Gough street to its intersection with the center line of Market street; thence southerly and westerly along the center line of Market street to Valencia street; thence southerly along the center line of Valencia street to the center line of the crossing of Valencia and McCoppin streets; thence at a right angle easterly along the center line of McCloppin street to a point one hundred and forty-four (144) feet easterly from the easterly line of Valencia street; thence extending in a northerly and easterly direction on a radius of three hundred and ninety-six and eight one-hundredths (396.08) feet to the center line of Stevenson street if produced through private property, and along the center line of Stevenson street, to the westerly line of Brady street; thence diagonally in an easterly direction across Brady street to the intersection of the east line of Brady street and the center line of Stevenson street produced and Stevenson street; thence along the center line of Stevenson street in a

northeasterly direction to the center line of Twelfth street; thence southeasterly along the center line of Twelfth street to the center line of Otis street; thence in a northerly and easterly direction along the center line of Otis street and Mission street to the center of the crossing of Mission and Ninth streets; thence in a southerly and easterly direction along the center line of Ninth street to the center of the crossing of Ninth and Minna streets; thence in a northerly and easterly direction along the center line of Minna street to Sixth street; thence in a southerly and easterly direction along the center line of Sixth street to the center of the crossing of Sixth and Howard streets; thence in a northerly and easterly direction along the center line of Howard street to the center of the crossing of Howard and First streets; thence in a southerly and easterly direction along the center line of First street to the center of the crossing of First
31 and Folsom streets; thence easterly along the center line of Folsom street to the center line of Steuart street; thence in a northerly and westerly direction along the center line of Steuart street to a point one hundred and eighty-three (183) feet and four (4) inches northerly from the northerly line of Folsom street; thence at right angles easterly through private property to the waters of the Bay; thence along the shore line of the waters of the Bay in a northerly and westerly direction to the point of commencement."

The lot of land described in paragraph II of the complaint and every part thereof lies within the fire limits as set out and established by said Ordinance No. 1198, and as reenacted by said section 3 of Ordinance No. 31 (new series), and said lot of land and every part thereof lies within the fire limits as set out and established by said section 3 of Ordinance No. 1008 (new series). The building erected upon said lot of land as alleged in paragraph III of the complaint was erected in or about the month of May, 1906, and was at the time of its erection, ever since has been, and now is a frame building constructed and composed entirely of wood. Said Ordinance No. 1198 was in full force and effect at the time said wooden building was erected and said Ordinance No. 1198 made it
32 unlawful to erect, or maintain said wooden building upon said lot of land; and under said Ordinance No. 1198, and said Ordinance No. 31 (new series) and said Ordinance No. 1008 (new series) it has ever since been and is now unlawful to maintain said wooden building on said lot of land.

The Board of Supervisors of the City and County of San Francisco have duly and regularly adopted and enacted an Ordinance No. 4170 (new series). Said ordinance was duly and regularly approved and became a law on May 8, 1917, and said ordinance was and is entitled:

"Amending Ordinance No. 1008 (new series) known as 'The Building Law', approved December 22, 1909, by adding thereto a new section to be numbered '301*a*' ".

Said Ordinance No. 4170 (new series) has never been repealed and has been ever since said May 8, 1917, and now is in full force and effect. Said Ordinance No. 4170 (new series) reads and provides as follows:

"Ordinance No. 4170 (New Series).

Amending Ordinance No. 1008 (new series) known as 'The Building Law', approved December 22, 1909, by adding thereto a new section to be numbered '301a'.

Be it ordained by the People of the City and County of San Francisco as follows:

33 'Section 1. A new section is hereby added to Ordinance No. 1008 (new series) known as 'The Building Law' to be numbered 301a to read as follows:

'Section 301a. It shall be unlawful for any person, firm, company or corporation to erect, place or maintain any wooden building or structure of any kind whatsoever in that portion of the City and County of San Francisco described in section 3, part 2 hereof as the Fire Limits.'

It is hereby made the duty of the Board of Public Works to enforce the provisions of this section and said Board of Public Works is hereby authorized and directed to demolish and remove any building or structure affected by this section upon the failure of the owner or owners thereof to comply with the terms of this section; and the cost of said demolition and removal shall constitute a first lien on said building or structure and the material thereof.

Ordinance No. 1139 (new series) approved April 12, 1910, is hereby repealed."

Under the provisions of said Ordinance No. 4170 (new series) it is the duty of the Board of Public Works of the City and County of San Francisco, and of defendants, Timothy A. Bearden, Adolph Judell, and Daniel G. Fraser, as and constituting said Board

34 of Public Works, and their servants, agents and employees, for that purpose designated, to demolish and remove said wooden building aforesaid, and said defendants, unless restrained therefrom, intend to and will proceed to demolish and remove and cause to be demolished and removed said wooden building as in said Ordinance No. 4170 (new series) provided.

Defendants further allege that said wooden building is and constitutes a nuisance in this that it is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life and property, and particularly in this that it is constructed entirely of wood in violation of said Ordinance No. 1198, said Ordinance No. 31 (new series) and said Ordinance No. 1008 (new series), and is highly inflammable and dangerous to the welfare of the tenants and occupants thereof, and constitutes a grave fire risk to surrounding and adjoining buildings and the tenants and occupants thereof.

Wherefore these defendants pray that plaintiffs take nothing and for their costs of suit.

GEORGE LULL,
City Attorney, Attorney for Defendants.

35 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Adolph Judell, being first duly sworn, deposes and says: That he is one of the defendants named herein; that he has read the foregoing amended answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on information or belief and as to those matters he believes it to be true; that all of the facts and circumstances stated in said amended answer are within his knowledge and for that reason he makes this verification.

ADOLPH JUDELL.

Subscribed and sworn to before me this 14th day of January, 1918.
[SEAL.]
A. J. NAGLE,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Received copy of within original this 14th day of January, 1918. J. F. Riley and Andrew Maguire, Attorneys for Plaintiffs. Filed Jan. 14, 1918. H. I. Mulcrevy, Clerk. By H. Brunner, Deputy Clerk.

36 [Title of Court and Cause.]

Demurrer to Amended Answer.

Now come the plaintiffs and demur to the amended answer on file herein on the following grounds:

I.

That said answer does not state facts sufficient to constitute a defense.

II.

That the defense or answer attempted to be set forth in paragraph II of said answer does not state facts or set forth denials sufficient to constitute a defense.

III.

That the defense attempted to be set forth in paragraph III of said answer does not state facts or set forth denials sufficient to constitute a defense.

IV.

The the defense attempted to be set forth in paragraph IV of said answer does not state facts or set forth denials sufficient to constitute a defense.

V.

37 That the answer or defense set forth in paragraph VI of said answer down to line 15, page 10 of said answer, does not state facts sufficient to constitute a defense.

VI.

Said answer is uncertain in this: That it cannot be ascertained therefrom in what respects it is an obstruction to the free use of property, nor to what property it is an obstruction; that it cannot be ascertained therefrom how it interferes with the comfortable enjoyment of life and property, nor can it be ascertained therefrom with whose enjoyment of life or with whose enjoyment of property it does interfere; that it cannot be ascertained therefrom in what respects or how it constitutes a grave fire risk to surrounding and adjoining buildings, or to the tenants or occupants thereof, nor can it be ascertained therefrom in what respects it constitutes a fire risk of any kind or character whatsoever; that it cannot be ascertained therefrom how the said building was constructed in violation of Ordinance No. 1198, nor can it be ascertained therefrom what portion of said ordinance was violated by the building of said structure; that it cannot be ascertained therefrom how, or in what respects it violates the provision of Ordinance No. 31 or of Ordinance No. 1008; that it cannot be ascertained therefrom what portion of the said
38 Ordinance No. 4170 make it the duty of the Board of Public Works to remove said building, nor what portion of said ordinance makes it the duty of any of said defendants, or their servants, or their agents or their employees to demolish or remove said building; that it cannot be ascertained therefrom what portion of said Ordinance No. 4170 referred to in paragraph III of said answer gives unto them the authority to remove said building; that it cannot be ascertained therefrom what portion of said Ordinance No. 4170 referred to in paragraph IV of said answer vests in them the authority to proceed to remove or demolish said building; that it cannot be ascertained therefrom how, or in what respects, said Ordinance No. 1198 made it unlawful to erect or maintain said wooden building upon said lot of land; that it cannot be ascertained therefrom what part of said ordinance so made it unlawful to so erect or maintain said wooden building; that it cannot be ascertained therefrom how the said wooden building was been unlawfully maintained under said Ordinance No. 1198, nor can it be ascertained therefrom what portion of said Ordinance No. 1198 makes it unlawful or to maintain said wooden building on said lot of land; that it cannot be ascertained therefrom how the erecting or maintaining of said
39 building was unlawful under Ordinance No. 31 set forth in said answer; that it cannot be ascertained therefrom if the defendant intends to allege that the said building has ever since the passage of Ordinance 1198 been unlawfully upon and maintained on said lot of land, or if they intend to allege that it has been ever

since the passage of Ordinance No. 1008 *been* unlawfully maintained on said lots of land.

VI.

That said answer is unintelligible for the reasons set forth in the preceding paragraph V, which said paragraph with the exception of the first six words thereof, is hereby referred to and made a part hereof, as fully for all purposes as if set forth at length herein.

VII.

That said answer is ambiguous for the reasons set forth in the preceding paragraph V, which said paragraph with the exception of the first six words thereof, is hereby referred to and made a part hereof, as fully for all purposes as if set forth at length herein.

Wherefore, plaintiffs pray judgment against the defendants and that their demurrer to said answer be sustained.

ANDREW G. MAGUIRE,
J. F. RILEY,
Attorneys for Plaintiffs.

40 We hereby certify that the foregoing demurrer to the answer is not filed for delay and in our opinion is well taken by point of law.

ANDREW G. MAGUIRE,
J. F. RILEY,
Attorneys for Plaintiffs.

(Endorsed:) Rec'd a copy of within demurrer to amended answer this 27th day of Feb'y, 1918. George Lull, Attorney for Defendants. Filed Feb. 28, 1918. H. I. Mulcrevy, Clerk, By J. F. Dunworth, Deputy Clerk.

[Title of Court and Cause.]

Minute Order Overruling Demurrer to Amended Answer.

Saturday, April 13, 1918.

Court met, Honorable G. E. Crothers, judge, and officers of the court present.

In the following matters heretofore submitted for decision the demurrer to the amended answer is by the court ordered overruled and the motion to strike out parts of the amended answer ordered denied. [Entered in minutes of department No. 14, volume 126, page 100.]

41 [Title of Court and Cause.]

Minute Order Dismissing Cause as to Fictitious Defendants.

Saturday, June 29, 1918.

Court met, Honorable G. E. Crothers, judge, and officers of the court present.

In this cause, pursuant to the filing in court this day of an agreed statement of facts, and counsel present and consenting, this cause is by the court ordered to stand submitted for decision, also a motion that the restraining order be continued in force until determination of appeal, is ordered to stand submitted; and the cause ordered dismissed as to fictitious defendants.

[Entered in minutes of department No. 14, volume 126, page 160.]

[Title of Court and Cause.]

Stipulation for Rendition of Judgment on Agreed Statement of Facts.

It is stipulated and agreed by and between the parties to the above entitled action, that the court may render its decision in the above entitled action on the following

42 *Agreed Statement of Facts.*

(It is understood however that this stipulation does not constitute an admission that any of the facts herein agreed to are relevant or material to the matter at issue.)

I.

That both plaintiffs are now, and at all times mentioned in the complaint were citizens of the United States of America and of the State of California, and are now and at all said times were, residents of the City and County of San Francisco, State of California.

II.

That defendants, Timothy A. Reardon, Adolph Judell and Daniel G. Fraser, are now and have been for more than one year next preceding the filing of the said complaint the duly qualified and acting commissioners of the Board of Public Works in and for the City and County of San Francisco, State of California, and that as such commissioners at all said times mentioned in said complaint have constituted and do now constitute the Board of Public Works of the City and County of San Francisco. Said John P. Horgan is their chief building inspector. That defendant City and County of San Francisco is, and at all times mentioned in said complaint and in
43 the amended answer thereto, was a municipal corporation, in the State of California.

III.

That plaintiffs are now and have been during all times mentioned in said complaint and amended answer the owners in fee simple absolute of that certain parcel of real estate, situate, lying and being in the City and County of San Francisco, State of California, and bounded and described as follows, to wit:

Commencing at the point forming the intersection of the southerly line of Hayes street with the easterly line of Van Ness avenue; running thence southerly on the easterly line of Van Ness avenue one hundred and twenty (120) feet; thence at right angles easterly one hundred (100) feet; thence at right angles northerly one hundred and twenty (120) feet, and thence at right angles westerly and along said southerly line of Hayes street one hundred (100) feet to the point of commencement. Being part of Western Addition Block 69 according to the official maps of the City and County of San Francisco.

IV.

That heretofore, to wit, on or about the month of May, 1906, there was constructed and erected by plaintiffs upon the said
44 described parcel of real estate a substantial one-story wood building, containing nine stores, known and designated as numbers 145 and 147 Hayes street and numbers 130-132-134-136-138-140-142-144 Van Ness avenue, at an expense of twelve thousand (12,000) dollars; that in the month of May, 1906, by and with the consent of defendants and under the written permit and under the supervision of the said Board of Public Works, an oven was constructed and installed by plaintiffs in said building and as a part thereof, at a cost of $700, and said oven ever since has been and is still a part of said building; and that ever since said time the said building has been and now is upon the said lot of land above described and constitutes an improvement thereon. That said building has been ever since its construction leased by plaintiffs to and is now occupied by tenants and is used for lawful business purposes, the tenants in said nine stores being engaged in the sale of goods, wares and merchandise, the automobile repair business, carpenter work, etc., and all duly licensed by the said city and county to conduct said businesses in said stores; and said building yields at this time a substantial monthly rental. That the City and County of San Francisco has ever since the construction thereof, as aforesaid, assessed said building and taxed the same as property, and
45 that the said improvements are now assessed and now taxed as property by said City and County of San Francisco, and that plaintiffs have for over ten years last past paid all taxes levied and assessed thereon as they have become due; that said building has been assessed for the present fiscal year, and plaintiffs will be compelled to pay the taxes for the present fiscal year now due and payable, under penalty of the sale to the state of said property.

V.

That said building is assessed for taxes by the City and County of San Francisco for the present fiscal year for 1918-1919 and the taxes thereon for said year are a lien upon the real estate above described and must be paid by said plaintiffs.

VI.

That the said City and County of San Francisco has since the erection of said building above described erected and maintained and used, and is now maintaining and using in the same district or fire limits (referred to in the alleged ordinance hereinafter and in the amended answer set forth) in and within which said building belonging to plaintiffs is situated, wooden buildings, including two fire-
houses, two wooden buildings used as school rooms, and one
46 police station, in which many human beings are housed and some kept and detained.

VII.

That on October 24, 1917, the said commissioners constituting the said Board of Public Works did, at a meeting of said board regularly held, adopt a so-called resolution in words and figures as follows:

Resolution 55734, Second Series.

Resolved, that Chief Building Inspector John P. Horgan be and is hereby directed to serve notices upon the parties responsible for the shacks at the southeasterly corner of Van Ness avenue and Hayes street known as 145 and 147 Hayes street, and 130, 132, 134, 136, 138, 140, 142 and 144 Van Ness avenue, to raze these buildings within 5 days from the date of the service of notices; also that chief building inspector be and is hereby requested to file immediately with the Board of Public Works an estimate of the cost of razing these shacks.

Adopted October 25, 1917 by the following vote:

Ayes: Commissioners Judell, Fraser and Reardon.
D. R. S.

47

VIII.

That thereafter and on October 29, 1917, said commissioners so constituting the said Board of Public Works did cause to be served on each of the said plaintiffs a written notice in words and figures as follows, to wit:

Office of Board of Public Works.

San Francisco, Cal., Oct. 29, 1917.

To the Owner or Owners of that Certain Building or Structure Maintained on the lot situated at the southeasterly corner of Van Ness avenue and Hayes street in the City and County of San Francisco, and fronting upon both of said named streets:

You are hereby notified that under and by virtue of the authority and direction provided in an ordinance of the City and County of San Francisco, approved May 8, 1917, and entitled, "Ordinance No. 4170, new series, amending Ordinance No. 1008, new series, known as 'The Building Law,' approved December 22, 1909, by adding thereto a new section to be numbered, '301-a'," the Board of Public Works of said City and County will demolish and remove that certain building or structure owned and maintained by you, as the owner or owners thereof, on the lot situated at the southeasteriy cor-
ner of Van Ness avenue and Hayes street in said city and
48 county and fronting upon both streets, upon the failure of you, as such owner or owners, to demolish and remove the same within five days from the service of this notification.

A copy of the said ordinance is hereto attached for reference by you to the provisions thereof.

[SEAL.] BOARD OF PUBLIC WORKS OF THE CITY AND COUNTY OF SAN FRANCISCO.
By JOHN P. HORGAN,
Chief Building Inspector.

Served upon C. S. Maguire on the 29th day of October, 1917, by Louis Bailey, Inspector of Buildings.

Attached to said notice was a copy of said ordinance referred to in said notice which is in words and figures as follows:

Bill No. 4515. Ordinance No. 4170. (New Series.)

Amending Ordinance No. 1008 (new series) known as "The building law", approved December 22, 1909, by adding thereto a new section to be numbered "301*a*".

Be it ordained by the People of the City and County of San Francisco as follows:

Section 1. A new section is hereby added to Ordinance No. 1008 (new series) known as "The Building Law" to be numbered 301*a* to read as follows:

49 Section 301*a*. It shall be unlawful for any person, firm, company or corporation to erect, place or maintain any wooden building or structure of any kind whatsoever in that portion of the City and County of San Francisco described in section 5, part 2 hereof as the Fire Limits."

It is hereby made the duty of the Board of Public Works to enforce the provisions of this section and said Board of Public Works is hereby authorized and directed to demolish and remove any building or structure affected by this section upon the failure of the owner or owners thereof to comply with the terms of this section; and the cost of said demolition and removal shall constitute a first lien on said building or structure and material thereof.

Ordinance No. 1139 (new series) approved April 12, 1910, is hereby repealed.

Finally passed—Board of Supervisors, San Francisco, May 7, 1917.

Ayes: Supervisors Brandon, Deasy, Gallagher, Hayden, Hilmer, Hocks, Hynes, Kortick, Lahaney, McLaren, Mulvihill, Nelson, Nolan, Power, Suhr, Walsh, Welch, Wolfe.

J. S. DUNNIGAN,
Clerk.

Approved, San Francisco, May 8, 1917.

JAMES ROLPH, JR.,
Mayor.

50

IX.

That on the same day, namely, October 29, 1917, said commissioners did cause to be served on each of the tenants of plaintiffs occupying said nine stores, a written notice in words and figures as follows:

City and County of San Francisco.

Department of Public Works.

Bureau of Building Inspection.

To the Tenant or Tenants of Building and Premises Situate on the east line of Van Ness ave. south of Hayes street, and known and numbered as 134 Van Ness avenue of the City and County of San Francisco:

You are hereby notified that the owner of the above described premises has been notified to demolish and remove said building or structure within five days, and in accordance therewith you will take whatever steps you deem necessary for the protection of your property upon said described premises before such demolition and removal.

BOARD OF PUBLIC WORKS,
By JOHN P. HORGAN,
Chief Building Inspector.

X.

That the said defendants will, unless restrained by this court, proceed to demolish and remove the said buildings under the
51 claim of authority claimed by defendants to be vested in them by said Ordinance No. 4170.

XI.

That the Charter of the City and County of San Francisco now provides, and at all the times mentioned in said complaint and amended answer has provided in subdivision 5 of section 1 of Chapter II of article II thereof, as follows, to wit:

"Section 1. Subject to the provisions, limitations and restrictions in this Charter contained, the Board of Supervisors shall have power:

5. To fix the limits within which wooden buildings or structures shall not be erected, placed or maintained, and to prohibit the same within such limits. Such limits when once established shall not be changed, except by extension."

Pursuant to the power in them vested by this provision of the Charter, and long prior to the construction of said frame building herein referred to, the Board of Supervisors of the City and County of San Francisco duly and regularly adopted and enacted an Ordinance No. 1198. Said ordinance was duly and regularly approved on May 5, 1904, and said ordinance was entitled:

"Defining the Fire Limits of the City and County of San Francisco."

52 Said Ordinance No. 1198 at all times read and provided:

"Be it ordained by the People of the City and County of San Francisco as follows:

Section 1. The fire limits shall be bounded by a line commencing at the intersection of the shore line of the Bay of San Francisco with the easterly end of Greenwich street; running thence westerly along the center line of said Greenwich street to its intersection with the center line of Sansome street; thence southerly along the center line of Sansome street to its intersection with the center line of Broadway; thence westerly along the center line of Broadway to the center line of Virginia place; thence southerly along the center line of Virginia place to its intersection with the center line of Pacific street; thence westerly along the center line of Pacific street to the center of the crossing of Pacific and Powell streets; thence southerly along the center line of Powell street to the center of the crossing of Powell and Sacramento streets; thence easterly along the center line of Sacramento street to the center of the crossing of Sacramento and Stockton streets; thence southerly along the center line of Stockton street to a point distant one hundred and thirty-seven and one-half (137½) feet northerly from the northerly line of Bush street;

53 thence westerly parallel with Bush street on a line distant one hundred and thirty-seven and one-half (137½) feet northerly from the northerly line of Bush street to the center line of Van Ness avenue; thence at right angles southerly along the center line of Van Ness avenue to the intersection of the center line of Fell street; thence westerly along the center line of Fell street to the center of the crossing of Fell and Franklin streets; thence south-

erly along the center line of Franklin street to the center of the crossing of Franklin and Page streets; thence westerly along the center line of Page street to the center of the crossing of Page and Gough streets; thence southerly along the center line of Gough street to its intersection with the center line of Market street; thence southerly and westerly along the center line of Market street to Valencia street; thence southerly along the center line of Valencia street to the center line of the crossing of Valencia and Hermann streets; thence at a right angle easterly along the center line of Hermann street to a point one hundred and forty-four (144) feet from the easterly line of Valencia street; thence extending in a northerly and easterly direction on a radius of three hundred and ninety-six and eight one-hundredths (396.08) feet to the center line of
54 Stevenson street if produced through private property and the center line of Stevenson street to the westerly line of Brady street; thence diagonally in an easterly direction across Brady street to the intersection of the east line of Brady street and the center line of Stevenson street produced and Stevenson street; thence along the center line of Stevenson street in a northeasterly direction to the center line of Twelfth street; thence southeasterly along the center line of Twelfth street to the center line of West Mission street; thence in a northerly and easterly direction along the center line of West Mission street and Mission street to the center of the crossing of Mission and Ninth streets; thence in a southerly and easterly direction along the center line of Ninth street to the center of the crossing of Ninth and Minna streets; thence in a northerly and easterly direction along the center line of Minna street to Sixth street; thence in a southerly and easterly direction along the center line of Sixth street to the center of the crossing of Sixth and Howard streets; thence in a northerly and easterly direction along the center line of Howard street to the center of the crossing of Howard and First streets; thence in a southerly and easterly direction along the center line of First street to the center of the crossing of First and
55 Folsom streets; thence easterly along the center line of Folsom street to Steuart street; thence in a northerly and westerly direction along the center line of Steuart street to a point one hundred and eighty-three (183) feet and four (4) inches northerly from the northerly line of Folsom street; thence easterly through private property to the waters of the bay; thence along the shore line of the waters of the bay in a northerly and westerly direction to the point of commencement.

Section 2. Every person, company or corporation violating the provisions of this ordinance shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred ($500) dollars, or by imprisonment not exceeding six (6) months, or by both such fine and imprisonment."

Said ordinance was not repealed or modified until July 5, 1906.

That the land described in said complaint is and was within the territory known as "Fire Limits" and described in said Ordinance No. 1198.

Subsequently said Board of Supervisors duly and regularly adopted and enacted an Ordinance No. 31 (new series). Said ordinance was duly and regularly approved on July 5, 1906, and said ordinance was entitled:

56 "Regulating the Construction, Erection, Enlargement, Raising, Alteration, Repair, Removal, Maintenance, Use and Height of Buildings; Regulating Character and Use of Materials in and for Buildings; Establishing Fire Limits, and Repealing All Ordinances in Conflict With This Ordinance."

Said Ordinance No. 31 (new series) in section 3 thereof reenacted section 1 of Ordinance No. 1198, and said section 3 of Ordinance No. 31 (new series) was not repealed or modified until December 22, 1909.

Thereafter said Board of Supervisors duly and regularly adopted and enacted an Ordinance No. 1008 (new series). Said ordinance was duly and regularly approved on December 22, 1909, and said ordinance was entitled:

"Regulating the Construction, Erection, Enlargement, Raising, Alteration, Repair, Removal, Maintenance, Use and Height of Buildings; Regulating Character and Use of Materials in and for Buildings; Establishing Fire Limits, and Repealing all Ordinances in Conflict with this Ordinance."

Section 3 of said Ordinance No. 1008 (new series) has never been repealed. Said section 3 of said Ordinance No. 1008 (new series) at all times read and provided and now reads and provides as follows:

57 Section 3. That portion of the City and County of San Francisco within the boundary lines in this section hereinafter set forth shall be known as the fire limits within which it shall be unlawful to erect or construct frame or wooden buildings, or to alter, enlarge, repair, add to or build upon any building or buildings except as in this ordinance otherwise provided, viz:"

The premises described in said complaint are within the territory described and designated in said Ordinance No. 1008 as "Fire Limits." Said building described in said complaint was at the time of its erection, ever since has been and is now a frame building, composed of wood, glass for windows, and brick for said oven and chimney.

The Board of Supervisors of the City and County of San Francisco have duly and regularly adopted and enacted an Ordinance No. 4170 (new series). Said ordinance was duly and regularly approved on May 8, 1917, and said ordinance was and is entitled:

"Amending Ordinance No. 1008 (new series) known as 'The Building Law', approved December 22, 1909, by adding thereto a new section to be numbered '301*a*'."

Said Ordinance No. 4170 (new series) has never been repealed or modified. Said Ordinance No. 4170 (new series) reads and provides as follows:

"Ordinance No. 4170 (new series).

58 Amending Ordinance No. 1008 (new series) known as 'The Building Law,' approved December 22, 1909, by adding thereto a new section to be numbered '301*a*'.

Be it ordained by the People of the City and County of San Francisco as follows:

'Section 1. A new section is hereby added to Ordinance No. 1008 (new series) known as 'The Building Law' to be numbered 301*a* to read as follows:

'Section 301*a*. It shall be unlawful for any person, firm, company or corporation to erect, place or maintain any wooden building or structure of any kind whatsoever in that portion of the City and County of San Francisco described in section 3, part 2 hereof as the Fire Limits.'

It is hereby made the duty of the Board of Public Works to enforce the provisions of this section and said Board of Public Works is hereby authorized and directed to demolish and remove any building or structure affected by this section upon the failure of the owner or owners thereof to comply with the terms of this section; and the cost of said demolition and removal shall constitute a first lien on said building or structure and the material thereof.

59 Ordinance No. 1139 (new series) approved April 12, 1910, is hereby repealed.

ANDREW G. MAGUIRE,
J. F. RILEY,
Attorneys for Plaintiffs.
GEORGE LULL,
Attorney for Defendants.

San Francisco, June 26, 1918.

(Endorsed:) Filed in open court June 29th, 1918. H. I. Mulcrevy, Clerk, By F. B. Lorigan, Deputy Clerk.

[Title of Court and Cause.]

Findings of Fact and Conclusions of Law.

The above entitled cause having been submitted to the court on an agreed statement of facts, the court herewith makes is findings of fact and conclusions of law as follows:

Findings of Fact.

That a stipulation in writing was entered into by the parties in this action concerning the facts involved and the issues raised by the pleadings, which stipulation was and is in the words and figures following, to wit:

(Here followed agreed statement of facts as set forth hereinbefore.)

60 From the foregoing facts the court finds the following as its

Conclusions of Law.

That said building was erected and constructed by plaintiffs in violation of law, to wit: in violation of the provisions of said Ordinance No. 1198 and subdivision 5, section 1, chapter II of article II of the Charter of the City and County of San Francisco, and that said building has been ever since its erection, and now is, maintained by said plaintiffs in violation of law; that plaintiffs are not entitled to an injunction or to any relief in a court of equity and that defendants are entitled to judgment herein.

Let judgment be entered accordingly.

Done in open court this 23rd day of August, 1918.

GEO. E. CROTHERS,
Judge of the Superior Court.

61 (Endorsed:) Filed Aug. 23, 1918. H. I. Mulcrevy, Clerk. By J. F. Dunworth, Deputy Clerk.

[Title of Court and Cause.]

Judgment.

In the above entitled cause the court having heretofore duly made, given and signed its findings of fact and conclusions of law and having ordered that judgment be entered in accordance therewith:

Now therefore, by reason of the law and the findings aforesaid, it is ordered, adjudged and decreed that plaintiffs take nothing by this action, and that judgment be and the same is hereby entered in favor of defendants.

Upon motion of counsel for plaintiffs that the temporary injunction heretofore granted be continued in force pending an appeal by plaintiffs from this judgment to the Supreme Court of the State of California, and upon the further assurance of said counsel for plaintiffs that they will expedite said appeal and join with counsel for defendants in a petition to have said appeal advanced and set for hearing on the January, 1919, calendar of said Supreme Court;

62 it is further ordered that said temporary injunction be continued in full force and effect and that defendants and each of them, their servants, agents and employees be and they are hereby restrained and enjoined from entering in and upon the lot of land and premises in the complaint herein particularly described for the purpose of demolishing, destroying, removing or tearing down the buildings now standing thereon, and from interfering with the quiet and peaceful possession and enjoyment thereof by plaintiffs and plaintiffs' tenants, pending the determination of plaintiffs' appeal from this judgment to the Supreme Court of the State of California; provided however that if defendants file a reply brief in said appeal within forty days after plaintiffs have filed their opening brief therein, and plaintiffs thereafter fail to file their closing brief on or

before December 31st, 1918, or if plaintiffs fail or refuse to join with defendants in a petition to said Supreme Court to advance said appeal and to have said appeal placed on the January, 1919, calendar of said Supreme Court for argument, then this temporary injunction shall be of no further force and effect and shall stand dis-
63 solved.

Done in open court this 23rd day of August, 1918.

GEO. E. CROTHERS,
Judge of the Superior Court.

Recorded Aug. 23, 1918, 3:47 o'clock P. M., vol. 120, page 327. H. I. Mulcrevy, Clerk, By Chas. A. Siskron, Deputy Clerk.

(Endorsed:) Filed Aug. 23, 1918. H. I. Mulcrevy, Clerk, By J. F. Dunworth, Deputy Clerk.

[Title of Court and Cause.]

Clerk's Certificate to Judgment Roll.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, H. I. Mulcrevy, county clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior Court, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled cause, and recorded in judgment book 120 of said court, at page 327. And I further certify that the foregoing papers hereto annexed constitute the judgment roll in said cause.

64 Witness my hand and seal of said Superior Court this 23th day of August, A. D. 1918.

[SEAL.]

H. I. MULCREVY,
Clerk,
By G. A. WEIHE,
Deputy Clerk.

(Endorsed:) Filed August 26, 1918. H. I. Mulcrevy, Clerk, By G. A. Weihe, Deputy Clerk.

Recorded judgment book 120, page 327.

[Title of Court and Cause.]

Notice of Appeal from Judgment.

To the Defendants and George Lull, Attorney for Defendants:

You and each of you will please take notice that the plaintiffs in the above entitled action do hereby appeal to the Supreme Court of the State of California, from the judgment of the above entitled

court given and made and entered on August 23d, 1918, in favor of the defendants in said action and against the plaintiffs, and from the whole thereof except that portion of said judgment continuing in force the temporary injunction heretofore granted and restraining and enjoining the defendants and each of them, and their
65 servants, agents and employees from entering in and upon the lot of land and premises in the complaint described for the purpose of demolishing, destroying, removing or tearing down the buildings now standing thereon, and from interfering with the quiet and peaceful possession and enjoyment thereof by plaintiffs and plaintiffs' tenants, pending the determination of plaintiffs' appeal from said judgment to the Supreme Court of the State of California.

October 8th, 1918.

ANDREW G. MAGUIRE,
J. F. RILEY,
Attorneys for Plaintiffs.

(Endorsed:) Service of the within notice of appeal from judgment this 8th day of October, 1918, is hereby admitted. George Lull, Attorney for Defendants. Filed Oct. 8, 1918. H. I. Mulcrevy, Clerk. By H. Brunner, Deputy Clerk.

65½ *Stipulation to Transcript.*

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct copies of all the papers therein set forth now on file in the office of the county clerk of the City and County of San Francisco, State of California; that the minute orders therein contained are full, true and correct copies thereof as made and entered in the minutes of the Superior Court; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

It is further stipulated that a sufficient undertaking on appeal, in due form of law, has been properly filed in said cause in the manner and within the time required by law.

Dated, November 6, 1918.

GEORGE LULL,
City Attorney, City and County of San Francisco;
MAURICE T. DOOLING, JR.,
Assistant City Attorney, City and County of San Francisco,
Attorneys for Respondents.
ANDREW G. MAGUIRE,
J. F. RILEY,
Attorneys for Appellants.

67 *Clerk's Certificate to Transcript.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, H. I. Mulcrevy, county clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior Court in and for said city and county, hereby certify that I have compared the foregoing transcript with the original papers in said action, now on file in my office, and with the orders therein made and entered on the minutes of said court, and that the papers and orders therein contained are full, true and correct copies of the originals on file in this office, and of the whole thereof.

I further certify that the erasures and interlineations appearing in the foregoing transcript were made before certifying thereto.

I further certify that a sufficient undertaking on appeal, in due form of law, has been properly filed in said cause in the manner and within the time required by law.

In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court this — day of November, 1918.

[SEAL.]

H. I. MULCREVY,
Clerk.

By —— ——,
Deputy Clerk.

68 First Appellate District, Division One, June 14, 1919.

Civil. No. 2809.

MICHAEL MAGUIRE et al., Plaintiffs and Appellants,

v.

TIMOTHY A. REARDON et al., etc., BOARD OF PUBLIC WORKS, CITY AND COUNTY OF SAN FRANCISCO, Defendants and Respondents.

69 Plaintiffs and appellants brought this action to enjoin respondents, the board of public works, and chief building inspector of the city and county of San Francisco from demolishing a certain wooden building erected and maintained within the fire limits of said city and county. The cause was submitted upon an agreed statement of facts, and this is an appeal from the judgment of the lower court denying the plaintiffs the relief asked for.

The building was erected in May, 1906, immediately following the great fire of that year, at a cost of $12,000, and is a wooden building containing nine stores, producing a substantial rental, the tenants in the said nine stores using the same for lawful business purposes. At the time of its construction, by and with the consent of defendants, and under the written permit and supervision of the said board of public works, an oven was constructed and installed by the plaintiffs

in said building, and as a part thereof, at a cost of $700. By its construction the oven became, and at the time of the filing of the complaint still was, a part of the building.

Acting under and by virtue of the authority and direction of an ordinance of the city and county of San Francisco, approved May 8, 1917 (Ord. No. 4170, N. S.), and known as "The Building Law", the board of public works adopted a resolution directing plaintiffs to raze the buildings in question within five days of the date of the service of notice thereof. The adoption of this resolution was followed by notice served on plaintiffs, to the effect that the board would demolish and remove the buildings upon the failure of the plaintiffs to remove the same within five days of the date of the notification. Notice of the intention of the board of public works was also served on each of the tenants of the building. Application to the lower court for an injunction to prevent the board from carrying out its determination, and the judgment of the lower court, refusing the same, followed.

The question thus clearly presented to this court for determination is whether, or not, wooden buildings, erected within the fire limits, may be summarily destroyed by duly authorized public officers of the municipality. Appellant maintains that the only ordinance in force covering the subject at the time of the erection of the building did not prohibit the erection of a one-story, wooden building such as the one in question; and that there is nothing in the charter of the city and county of San Francisco prohibiting such construction. These propositions must be determined adversely to the contention of the appellants.

70 The charter of the city and county of San Francisco now provides, and at all times mentioned in the agreed statement of facts, did provide, in subdivision 5 of section 1, chapter II, article II, as follows, to-wit:

"Section 1. Subject to the provisions, limitations and restrictions in this charter contained, the Board of Supervisors shall have power

* * *

5. To fix limits within which wooden buildings or structures shall not be erected, placed, or maintained, and to prohibit the same within such limits. Such limits when once established shall not be changed except by extension."

Pursuant to the power thus given by the charter, and long prior to the construction of the frame building herein referred to, the board of supervisors of the city and county of San Francisco duly and regularly adopted and enacted an ordinance, No. 1198. Said ordinance was approved on May 5, 1904, and was entitled: "Defining the fire limits of the City and County of San Francisco." This ordinance provides in section 1 thereof that: "The fire limits shall be bounded by a line commencing * * *" followed by an apt description of metes and bounds. The building in question here is situated within the described district. Section 2 of the ordinance provides a penalty for violating the provisions of the ordinance, but

does not otherwise provide that wooden buildings or structures shall not be erected, placed or maintained within the district described. The above provisions of the charter and this same ordinance were considered by this court in Bancroft v. Goldberg, Bowen & Co., 16 Cal. App. Dec. 37, and it was there held that the effect of the ordinance and the charter provisions is to make the erection or maintenance of a wooden building within the fire limits, as defined in the ordinance, unlawful; that the function of the ordinance is to define the fire limits, and when these limits are thus defined the charter itself makes it unlawful to erect or maintain wooden buildings within such limits. The court said:

"No express prohibition in the ordinance is required. The charter makes the prohibition. * * * So when the board of supervisors adopted the ordinance defining the fire limits, it was exercising its power 'to fix the limits within which wooden buildings or structures shall not be erected, placed, or maintained'. It was thus unlawful to maintain the building in question upon the leased premises at the date of the lease and at all times subsequently."

The supreme court granted a rehearing in the above case and in Bancroft v. Goldberg, Bowen & Co., 166 Cal. 416, sustained the decision of this court to the effect that the building there under consideration was erected in violation of the provisions of the building ordinance of the city and county of San Francisco.

The appellants argue that ordinance No. 4170, N. S., under which the respondents, the board of public works, are proceeding to demolish this building is unconstitutional for various reasons. The supreme court, in Bancroft v. Goldberg, Bowen & Co., supra, further held that the ordinance requiring the building which had been erected subsequently to April, 1906, in violation of the existing laws of the city and county, to be demolished or removed on or before a certain date, is a declaration of the policy of the board of supervisors that all temporary wooden buildings, erected in violation of law within the fire limits after the great conflagration of April 18, 1906, are a menace to the safety of the city, no longer finding any possible warrant in the necessities of the people, and that they constituted public nuisances which should be abated as soon as is reasonably possible.

[1] We see no distinction between the building under consideration in that case, and the one which is the subject of this litigation. The building constitutes a public nuisance and a court of equity will refuse any relief designed to perpetuate its maintenance, regardless of the validity of the ordinance. (Varney & Green
71 v. Williams, 155 Cal. 318.) It would appear, therefore, that the appellants are not in position to attack said ordinance No. 4170, for the reason that, having erected a wooden building in violation of law, and having continued in violation of law to maintain it to the present time, they cannot seek aid of a court of equity to maintain it. (Civ. Code, sec. 3517.)

[2] Assuming, however, that appellants might suggest the unconstitutionality of the ordinance, and for the reasons urged on this ap-

peal, we are satisfied that there is no merit in any of the points made. The ordinance is not discriminatory in providing for the general demolition and removal of wooden buildings, and not referring to buildings of other inflammable material. (Baumgartner v. Hasty, 100 Ind. 575.)

[3] The ordinance is not retroactive, for the building sought to be removed by the city was erected after the passage of the ordinance defining the fire limits. (Bancroft v. Goldberg, Bowen & Co., supra.)

[4] The ordinance does not deprive appellants of any vested rights without due process of law. "In removing a building erected in violation of law * * * no private right is invaded, because none could grow out of the illegal act." (Baumgartner v. Hasty, supra; Brooklyn v. Furey, 30 N. Y. Supp. 349.) Such building erected in violation of an ordinance fixing the fire limits may be torn down and removed without any judicial proceeding whatever. (Eikenlaub v. City of St. Joseph, 113 Mo. 395; Lemmon v. Guthrie Center, 84 N. W. 986.)

Appellants contend that because the city permitted them to erect a building, there was at least an implied contract upon its part that they should be permitted to maintain it, including the right to enter into contracts with others for the use and enjoyment of it. This contention, like all the others made by the appellants, has been decided to the contrary.

"The charter of the city and county of San Francisco authorizes the board of supervisors to fix the limits within which wooden buildings or structures shall not be erected or maintained, and provides that 'such limits when once established shall not be changed except by extension'. (Charter, chap. II, sec. 5.) So that it would seem that the supervisors would have had no authority after the fire, even by ordinance, to permit the erection of any wooden building within the limits previously defined as the fire limits, the charter provision limiting their powers in this behalf. But they did not even purport to so do by ordinance, which even if there were no charter provisions would be essential to any change in existing ordinances on the subject. All that there was in this case in effect was the unofficial announcement of the municipal authorities that they would regard the law on the subject suspended for the time being and would not attempt to enforce it, which was followed by the actual failure on the part of such authorities to enforce the same. The good faith both of the authorities and those erecting wooden buildings under the assurance thus given is not to be questioned in the slightest degree. It may freely be conceded that the emergency was such as to morally justify the authorities and those acting upon their assurance in doing as they did. But of course the law could not be changed in any such way. The ordinances on the subject continued in force unaffected by the unofficial announcement in the slightest degree, with the result that the construction of this building on this lot, which was expressly provided for in the lease, was 'contrary to an express provision of law', and therefore 'not lawful' (Civ. Code, sec. 1667), on

May 17th, 1906, and at all times thenceforth. We regard this proposition as so elementary in its nature as to require no citation of authority to uphold it. Certainly no case cited by learned
72 counsel for plaintiff tends to support a contrary law." (Howell v. City of Hamburg Co., 165 Cal. 175.)

Any contracts made by the appellants with their tenants must be deemed to have been made with the knowledge that the building was illegally maintained, and subject to the right of the city to remove it at any time. The city was not estopped to destroy the building; the police power cannot be bartered away even by express contract, and the power to remove a wooden building erected within the fire limits is an exercise of the police power of the first importance, since it immediately concerns the safety of persons and property. (Fire Dept. v. Atlas Co., 106 N. Y. 566, 13 N. E. 329; Boston Beer Co. v. Mass., 24 L. Ed. 989, 992; Union Cemetery Association v. Kansas City, 161 S. W. 261.)

Appellants' last contention is that the board of supervisors has no power to authorize the board of public works to demolish buildings. As before pointed out, the board of supervisors has power under the charter "to fix the limitations within which wooden buildings or structures may not be erected, placed or maintained", and to prohibit the same within such limitations. "The board of public works shall have charge, superintendence and control, under such ordinances as may from time to time be adopted by the supervisors * * * of the supervision of any and all building construction in the city and county.' (Charter, subd. 5, sec. 9, chap. I, art. VI.) "The chief engineer, assistant chief engineers, battalion chiefs and the fire marshal shall constitute a board of fire wardens, with power to inspect, and report to the board of public works, as to the safety of buildings and other structures within the city and county." (Sec. 1, chap. VI, art. IX of the charter.)

"All the legislative power of the city is by the charter vested in the board of supervisors (art. II, chap. I, sec. 1). By virtue of this clause, the constitutional grant of the police powers of the state to the city goes directly to and vests in the board, which thereby becomes possessed of the right to exercise within the city limits the entire police power of the state subject only to the control of general laws." (Odd Fellows Cemetery Assn. v. San Francisco, 140 Cal. 226, 230-231; In re Montgomery, 163 Cal. 457.) [5] It seems but logical to conclude, therefore, that the board of supervisors had ample power, by the adoption of the ordinance, to confer upon the board of public works full and complete authority to take and provide the required steps to remove the building in question, and thereby abate the nuisance arising from its erection and maintenance contrary to law.

The judgment is affirmed.

WASTE, *P. J.*

We concur:

RICHARDS, *J.*

KERRIGAN, *J.*

73

Copy.

In the District Court of Appeal of the State of California in and for the First Appellate District, Division One.

No. 2809.

MICHAEL MAGUIRE and C. S. MAGUIRE, Plaintiffs and Appellants,

vs.

TIMOTHY A. REARDON et al., etc., BOARD OF PUBLIC WORKS OF THE CITY AND COUNTY OF SAN FRANCISCO, Defendants and Respondents.

By the Court:

The petition for a rehearing in the above entitled cause is denied. Dated July 14, 1919.

WILLIAM H. WASTE,
Presiding Justice.

74

Copy.

In the Supreme Court of the State of California. In Bank.

S. F., No. 8925.

1 Civ., No. 2809.

MAGUIRE

vs.

REARDON et al.

By the Court:

The petition to have the above entitled cause heard and determined by this Court after judgment in the District Court of Appeal of the First Appellate District, Division One, is denied.

Dated this 11th day of August, 1919.

All concur except Wilbur, J., absent.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 13th day of Aug. A. D. 1919.

B. GRANT TAYLOR,
Clerk.

[SEAL.]

By MACKRILLE,
Chief Deputy Clerk.

75

Copy.

In the District Court of Appeal of the State of California in and for the First Appellate District, Division One.

No. 2809.

San Francisco, June 14th, 1919.

MICHAEL MAGUIRE and C. S. MAGUIRE, Plaintiffs and Appellants,

vs.

TIMOTHY A. REARDON et al., etc., BOARD OF PUBLIC WORKS, CITY AND COUNTY OF SAN FRANCISCO, Defendants and Respondents.

On Appeal from the Superior Court in and for the City and County of San Francisco.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the Court herein is delivered by

WASTE, *P. J.*

We concur:
RICHARDS, *J.*
KERRIGAN, *J.*

Whereupon, it is ordered, adjudged and decreed by the Court that the Judgment of the Superior Court in and for the City & County of San Francisco in the above entitled cause, be and the same is hereby affirmed.

The respondents to recover costs of this appeal.

I, J. B. Martin, Clerk of the District Court of Appeal of the State of California, in and for the First Appellate District, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 14th day of June, 1919, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 14th day of August, A. D. 1919.

[SEAL.]

J. B. MARTIN,
Clerk.
By WILLARD W. SHEA,
Deputy.

76 In the District Court of Appeal, State of California, First Appellate District, Division One.

MICHAEL MAGUIRE and C. S. MAGUIRE, Plaintiffs, and Plaintiffs in Error,

vs.

TIMOTHY A. REARDON, ADOLPH JUDELL and DANIEL G. FRASER, as Commissioners Constituting the Board of Public Works of the City and County of San Francisco; John P. Horgan as Chief Building Inspector; John Doe, James Doe and William Doe and City and County of San Francisco (a Municipal Corporation), Defendants and Defendants in Error.

To the Honorable the Presiding Justice of the District Court of Appeal of the State of California, First Appellate District, Division One:

Now come the plaintiffs and plaintiffs in error, Michael Maguire and C. S. Maguire, by J. F. Riley, their Attorney, and respectfully show: That on the 23rd day of August, 1918, a judgment was duly given and made whereby the Superior Court of the City and County of San Francisco, State of California, did deny and refuse to the said plaintiffs any and all relief for and on account of their complaint herein, and did give judgment for the defendants in said action, with their costs; that thereafter plaintiffs did duly and regularly appeal from said judgment to the Supreme Court of the State of California, and said Supreme Court did, thereafter, in the exercise of its Constitutional powers, order said cause transferred to the District Court of Appeal of said State, in and for the First Appellate District, Division One, of said Court for hearing and decision; and that thereafter the said District Court of Appeal of the State of California, in and for the First Appellate District, did affirm the judgment of the said Superior Court of the said City and County of San Francisco; that thereafter the plaintiffs did petition the Supreme Court of the State of California for a hearing by said Supreme Court; that there-
77 after said Supreme Court of the State of California, did deny the said petition and application of these plaintiffs for a hearing before said Supreme Court.

Your Petitioners feeling themselves aggrieved by the said judgments of said Supreme Court and of said District Court of Appeal and of said Supreme Court, entered therein as aforesaid, hereby petition the District Court of Appeal of the State of California, in and for the First Appellate District, Division One, for an order allowing them to prosecute a Writ of Error to the Supreme Court of the United States of America, under the laws of the United States in such case made and provided.

Wherefore, the premises considered, your petitioners pray, that a writ of error be issued, and that an appeal in this behalf to the Supreme Court of the United States, for the correction of the errors

complained of and herewith assigned be allowed, and that an order be made approving the bond furnished by your petitioners and staying all further proceedings until the determination of said Writ of Error by the said Supreme Court of the United States, and that a transcript of the record, proceedings and papers duly authenticated, may be sent to the Supreme Court of the United States.

JOHN F. RILEY,
Attorney for Plaintiffs in Error.

MICHAEL MAGUIRE AND
C. S. MAGUIRE,
Plaintiffs in Error,
By JOHN F. RILEY,
Attorney for Plaintiffs in Error.

San Francisco, October 11, 1919.

77½ [Endorsed:] Original. No. 2809. In the District Court of Appeal, State of California, First Appeliate District, Division One. Michael Maguire et al., Appellants & Plaintiffs, vs. Timothy A. Reardon et al., etc., et al., Respondents & Defendants. Petition for Allowance of Writ of Erorr to The United States Supreme Court. J. F. Riley, Attorney for Petitioners, 717 Pacific Building, San Francisco, California. Filed Oct. 14, 1919. J. B. Martin, clerk, by Walter S. Chisholm.

78 In the District Court of Appeal, State of California, First Appellate District, Division One.

MICHAEL MAGUIRE and C. S. MAGUIRE, Plaintiffs and Plaintiffs in Error,

vs.

TIMOTHY A. REARDON, ADOLPH JUDELL and DANIEL G. FRASER, as Commissioners Constituting the Board of Public Works of the City and County of San Francisco; John P. Horgan as Chief Building Inspector; John Doe, James Doe and William Doe, and City and County of San Franicsco (a Municipal Corporation), Defendants and Defendants in Error.

Assignment of Errors.

And now come the Plaintiffs in error Michael Maguire and C. S. Maguire by J. F. Riley, their Attorney, and say that there is manifest error in the judgment of the Superior Court of the City and County of San Francisco, and of the District Court of Appeal of the State of California, in and for the First Appeilate District, Division One, from which latter Court this Writ of Error is sued out, and of the Supreme Court of the State of California, and assign the following errors which plaintiffs in error aver occurred during and at

the trial thereof, upon which they rely to reverse the judgment entered herein as of record.

The action was brought to enjoin the Board of Public Works and the Chief Building Inspector of the City and County of San Francisco, State of California, and said City and County of San Francisco, from demolishing a certain wooden building erected and maintained within a district known as the "Fire limits" of said City and County.

The building was a substantial building consisting of many stores, rented to various tenants for legitimate business purposes.

The building was erected in 1906.

On May 8, 1917, an Ordinance known as Ordinance No. 4170, New Series, was enacted by the Board of Supervisors of the said City and County, and in October of the same year, the plaintiffs
79 were notified by the Board of Public Works of said City and County, "that by virtue of the authority and direction provided in an ordinance of the City and County of San Francisco, approved May 8, 1917, and entitled, "Ordinance No. 4170, New Series," the said Board of Public Works would demolish and remove the said building upon the failure of the plaintiffs to demolish and remove the same within five days from the service of the notification.

Said Ordinance No. 4170, reads as follows:

"Bill No. 4515. Ordinance No. 4170. (New Series.)

Amending Ordinance No. 1008 (new series) known as "The building law", approved December 22, 1909, by adding thereto a new section to be numbered "301*a*".

Be it ordained by the People of the City and County of San Francisco as follows:

Section 1. A new section is hereby added to Ordinance No. 1008 (new series) known as "The Building Law" to be numbered 301*a* to read as follows:

Section 301*a*. It shall be unlawful for any person, firm, company or corporation to erect, place or maintain any wooden building or structure of any kind whatsoever in that portion of the City and County of San Francisco described in section 5, part 2 hereof as the Fire Limits."

It is hereby made the duty of the Board of Public Works to enforce the provisions of this section and said Board of Public Works is hereby authorized and directed *directed* to demolish and remove any building or structure affected by this section upon the failure of the owner or owners thereof to comply with the terms of this section; and the cost of said demolition and removal shall constitute a lien on said building or structure and material thereof."

At the time of the erection of the building there was in force in said City and County an ordinance describing a territory designated as "fire limits", but not describing or defining what was meant by the term. The ordinance provided,

"Section 1. The fire limits shall be bounded—" and then follows a description of territory, but nothing to indicate the character of occupations, or businesses which might be carried on, or buildings which might be erected in, said territory.

At the same time there was in force a provision of the Charter of said City and County which gave the Supervisors power,"

"To fix the limits within which wooden buildings or structures shall not be erected, placed or maintained and to prohibit the same within such limits".

80 No other charter provisions or ordinances referring in any way to the subject were or are in existence.

The City and County itself after the erection of the building in question by the plaintiffs, erected and maintained and still maintains similar buildings in the same district or territory.

It levied taxes on the said building and said taxes were paid by the plaintiffs, and still continue to assess said building for taxes.

All of which facts are more fully set forth in the agreed statement of facts in the transcript on appeal on file in this Court, and which transcript is referred to and by reference made a portion of this assignment of errors.

The said District Court of Appeal and the said Superior Court erred in holding and deciding that the said provision of the Charter of the City and County of San Francisco, State of California, and the said Ordinance (Ordinance No. 4170) of the said City and County are, and each of them is not discriminatory and unlawful, and in holding that the said statute and ordinance do not make unlawful the erection, building and maintenance of buildings of canvas, papier-maché or other more inflammable materials than wood, and in holding that said Charter and said Ordinance do not provide for the destruction of buildings and the deprivation of vested rights, without due process of law, and without compensation, in violation of Section 1, Article XIV of the Constitution of the United States, and further in holding that said ordinance is not retroactive and unreasonable, and in holding that said provision of said Charter and said Ordinance gave authority to said defendants to demolish said building without a hearing, and said Supreme Court erred in denying a hearing after the decision of the said District Court of Appeal, and thereby affirming the judgment of said Superior Court.

Wherefore these plaintiffs in error pray that the said judgment may be reversed, and that the plaintiffs may be restored to all things they have lost by reason of the said erroneous judgments.

And, these plaintiffs will ever pray.

JOHN F. RILEY,
Attorney for Plaintiffs in Error.

MICHAEL MAGUIRE,
C. S. MAGUIRE,
Plaintiffs in Error.
By JOHN F. RILEY,
Attorney for Plaintiffs in Error.

80½ [Endorsed:] Original. No. 2809. In the District Court of Appeal, State of California. First Appellate District, Division One. Michael Maguire, et al., Appellants and Plaintiffs, vs. Timothy A. Reardon et al., etc., et al., Respondents and Defendants. Assignment of Errors Accompanying Petition for Allowance of Writ of Error to The United States Supreme Court. J. F. Riley, Attorney for Petitioners, 717 Pacific Building, San Francisco, California. Filed Oct. 14, 1919. J. B. Martin, Clerk. By Walter S. Chisholm.

81 Know all men by these presents:

That we, Annie McGovern and Alysse Maguire, citizens of the United States of America and of the State of California, and residents of the City and County of San Francisco, State of California, are held and firmly bound unto Timothy A. Reardon, Adolf Judell and Daniel G. Fraser, as Commissioners constituting the Board of Public Works of the City and County of San Francisco; John P. Horgan, as Chief Building Inspector, and City and County of San Francisco (a municipal corporation), and each of the, in the full and just sum of Five hundred ($500) Dollars, to be paid to the said above named obligees, their heirs, executors, administrators, successors and assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, by these presents.

Sealed with our seals, and dated this 11th day of October, 1919.

Whereas, lately, the Superior Court of the State of California, in and for the City and County of San Francisco, in a suit pending in said Court, between Michael Maguire and C. S. Maguire, Plaintiffs, and the above named obligees, defendants, did render judgment against said plaintiffs for costs of suit, and did deny the relief prayed for by said plaintiffs, and said plaintiffs did thereafter appeal from said judgment to the Supreme Court of the State of California, and said Supreme Court did transfer said action to the District Court of Appeal of the State of California, First Appellate District, Division One, and said judgment was, by said District Court of Appeal, affirmed, and thereafter said plaintiffs did apply to the said Supreme Court for a hearing, and said application was denied by the said Supreme Court, and the said plaintiffs have sued out and obtained a writ of error to the said District Court of Appeal, First Appellate District, Division One, in the aforesaid suit, and a citation directed to the said defendants citing and admonishing them to be and appear in the United States Supreme Court in Washington, D. C. sixty days from the date of said Citation.

Now, the condition of the above obligation is such, that if
82 the said Plaintiffs shall prosecute said Writ of Error to effect, and answer all damages and costs if they fail to make good their plea, the *the* above obligation to be void, else to remain in full force and virtue.

ANNIE McGOVERN.
ALYSSE MAGUIRE.

Signed, sealed and delivered in the presence of
ANDREW G. MAGUIRE.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Annie McGovern and Alysse Maguire whose names are subscribed as the sureties to the above undertaking being severally duly sworn, each for himself, deposes and says: That he is a resident and householder of the City and County of San Francisco, State of California, and is worth the sum specified in the said undertaking specified as the penalty thereof, over and above all his debts and liabilities, exclusive of property exempt from execution.

ANNIE McGOVERN.
ALYSSE MAGUIRE.

Subscribed and sworn to before me this 11th day of October, 1919.
[SEAL.] JOHN L. MURPHY,
Notary Public in and for the City and County of San Francisco, State of California.

October 14th, 1919.

Approved:

WILLIAM H. WAITE,
Presiding Justice, District Court of Appeal, State of California, in and for the First Appellate District, Division One.

82½ [Endorsed:] No. 2809. In the District Court of Appeal, State of California, First Appellate District, Division One. Michael Maguire et al., Plaintiffs and Appellants, vs. Timothy A. Reardon et al., etc., et al., Defendants and Respondents. Undertaking. Filed Oct. 14, 1919. J. B. Martin, Clerk.

83 In the District Court of Appeal, State of California, First Appellate District, Division One.

MICHAEL MAGUIRE and C. S. MAGUIRE, Plaintiffs and Plaintiffs in Error,

vs.

TIMOTHY A. REARDON, ADOLPH JUDELL and DANIEL G. FRASER, as Commissioners Constituting the Board of Public Works of the City and County of San Francisco; John P. Horgan, as Chief Building Inspector; John Doe, James Doe and William Doe, and City and County of San Francisco (a Municipal Corporation), Defendants and Defendants in Error.

Order Allowing Plaintiffs to Take Out and File a Writ of Error.

Now on this 14th day of October, 1919, the plaintiffs Michael Maguire and C. S. Maguire, having filed herein and presented to this

Court their petition praying for the allowance of a Writ of Error intended to be urged by them, the said Michael Maguire and C. S. Maguire, and also praying that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises, and that an order may be made approving the bond of the plaintiffs, hereby fixed at the sum of Five Hundred (500) Dollars, and staying all further proceedings until the determination of the said Writ of Error by the said Supreme Court of the United States, and having at the same time filed an Assignment of Errors.

Now, on consideration of said petition, and being fully advised in the premises, the Court does hereby allow the said Writ of Error, and approve the said bond.

WILLIAM H. WASTE,
Presiding Justice of the District Court of Appeal,
First Appellate District, Division One.

83½ [Endorsed:] Original. No. 2869. In the District Court of Appeal, State of California, First Appellate District, Division One. Michael Maguire et al., Appellants and Plaintiffs, vs. Timothy A. Reardon et al., etc., et al., Respondents and Defendants. Order Allowing Plaintiffs to Take Out and File a Writ of Error. Filed Oct. 14, 1919. J. R. Martin, Clerk, By Walter S. Chisholm.

84

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the District Court of Appeal of the State of California, First Appellate District, Division One, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court of Appeal, before you, between Michael Maguire and C. S. Maguire, Plaintiffs, and Timothy A. Reardon, Adolf Judell and Daniel G. Fraser, as Commissioners constituting the Board of Public Works of the City and County of San Francisco, John P. Horgan as Chief Building Inspector, and City and County of San Francisco (a municipal corporation), Defendants, a manifest error hath happened, to the great damage of the said Michael Maguire and C. S. Maguire, Plaintiffs, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the City of Washington, D. C., and filed in the office of the Clerk of the Supreme Court of the United States, on or before the 12th day of December,

1919, to the end that the record and proceedings aforesaid being inspected the Supreme Court of the United States may cause furth r to be done therein to correct that error, what of right, and according to the customs and laws of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this fourteenth day of October, in the year of our Lord One Thousand Nine Hundred and Nineteen.

[Seal of the U. S. District Court, Northern District of California.]

WALTER B. MALING,
Clerk U. S. District Court, Northern District of California.

Allowed by
WILLIAM H. WASTE,
Presiding Justice of the District Court of Appeal of the State of California, First Appellate District, Division One.

84½ [Endorsed:] Original. No. 2889. In the District — of Appeal, State of California, First Appellate District, Division One. Michael Maguire et al., Appellants & Plaintiffs, vs. Timothy A. Reardon et al., etc., et al., Respondents & defendants. Writ of Error.

85 In the District Court of Appeal, State of California, First Appellate District, Division One.

MICHAEL MAGUIRE and C. S. MAGUIRE, Plaintiffs and Plaintiffs in Error,

vs.

TIMOTHY A. REARDON, ADOLPH JUDELL and DANIEL G. FRASER, as Commissioners Constituting the Board of Public Works of the City and County of San Francisco; John P. Horgan, as Chief Building Inspector; John Doe, James Doe and William Doe, and City and County of San Francisco (a Municipal Corporation), Defendants and Defendants in Error.

Due and regular service of the Petition for Allowance of Writ of Error to the United States Supreme Court:

Assignment of Errors accompanying petition for allowance of writ of error to United States Supreme Court; Undertaking; Order allowing plaintiffs to take out and file a writ of error; Writ of Error; Citation; is hereby admitted on behalf of all the defendants above named in this action.

GEORGE LULL,
Attorney for Defendants and Respondents Above Named.

Dated October 14th, 1919.

86 In the District Court of Appeal, State of California, First Appellate District, Division One.

MICHAEL MAGUIRE and C. S. MAGUIRE, Plaintiffs and Plaintiffs in Error,

vs.

TIMOTHY A. REARDON, ADOLPH JUDELL and DANIEL G. FRASER, as Commissioners Constituting the Board of Public Works of the City and County of San Francisco; John P. Horgan, as Chief Building Inspector; John Doe, James Doe and William Doe and City and County of San Francisco (a Municipal Corporation), Defendants and Defendants in Error.

Citation.

87 United States of America to Timothy A. Reardon, Adolph Judell and Daniel Fraser, as Commissioners constituting the Board of Public Works of the City and County of San Francisco; John P. Horgan, as Chief Building Inspector, and City and County of San Francisco (a municipal corporation), Defendants in Error:

You are and each of you is hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, District of Columbia, Sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's office of the District Court of Appeal of the State of California, First Appellate District, Division One, wherein Michael Maguire and C. S. Maguire are Plaintiffs in error, and you are Defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable William H. Waste, Presiding Justice, District Court of Appeals, State of California, in and for the First Appellate District, Division One, October 14th, 1919.

[Seal District Court of Appeal, State of California, First Appellate District.]

Attest:

J. B. MARTIN,
Clerk District Court of Appeal, State of California, in and for the First Appellate District.
By WALTER S. CHISHOLM,
Deputy Clerk District Court of Appeal, State of California, in and for the First Appellate District.

Oct. 14th, 1919.

87½ [Endorsed:] #2809. In the District Court of Appeal, State of California, First Appellate District, Division One. Michael Maguire et al., Appellants & Plaintiffs, v. Timothy A. Reardon et al., etc., et al., Respondents and Defendants. Citation with Proof of Service of Papers, etc. Filed Oct. 14, 1919. J. B. Martin, Clerk, By Walter S. Chisholm, Citation.

88 UNITED STATES OF AMERICA,
District Court of Appeal of the State of California in and for the First Appellate District, Division One, ss:

Return.

In obedience to the commands of the written writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of said District Court of Appeal of the State of California, First Appellate District, in the City and County of San Francisco, this 8th day of November 1919.

[Seal District Court of Appeal, State of California, First Appellate District.]

J. B. MARTIN,
Clerk District Court of Appeal of the State of California in and for the First Appellate District,
By WALTER S. CHISHOLM,
Deputy.

Costs of Suit.

Defendant's costs	None

Costs of transcript, paid by Plaintiff:

Comparing record	$2.59
Filings (4) @ 25¢	1.00
Certificates (3) @ $1	3.00
Express charges	.51
Total	$7.10

89 DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE FIRST APPELLATE DISTRICT, DIVISION ONE, *ss:*

Certificate of Lodgment.

I, J. B. Martin, Clerk of above entitled court, do hereby certify that there was lodged with me as such clerk on the 14th day of October, 1919, in the matter of Michael Maguire et al. vs. Timothy A.

Reardon et al., constituting the Board of Public Works of the City and County of San Francisco et al.:

1. The original bond of which a copy is herein set forth.

2. Two copies of writ of error, as herein set forth, one for the defendants and one to file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at my office, in the City and County of San Francisco, this 8th day of November, 1919.

[Seal District Court of Appeal, State of California. First Appellate District.]

J. B. MARTIN,
Clerk District Court of Appeal of the State of California in and for the First Appellate District,
By WALTER S. CHISHOLM,
Deputy.

90 In the District Court of Appeal, State of California, First Appellate District, Division One.

MICHAEL MAGUIRE and CHARLES S. MAGUIRE, Plaintiffs and Plaintiffs in Error,

vs.

TIMOTHY A. REARDON, ADOLPH JUDELL and DANIEL G. FRASER, as Commissioners Constituting the Board of Public Works of the City and County of San Francisco; John P. Horgan, as Chief Building Inspector, and City and County of San Francisco (a Municipal Corporation), Defendants and Defendants in Error.

Stipulation as to Record.

To the Clerk of the Above Entitled Court:

It is hereby stipulated and agreed, by and between the parties to the above entitled action and matter, that the following documents shall go into and constitute the record in the above entitled matter in the appeal to the Supreme Court of the United States:

Complaint; Amended Answer to Complaint; Demurrer to Amended Answer; Minute Order Overruling Demurrer to Amended Answer; Minute Order Dismissing as to Fictitious Defendants; Stipulation for Rendition of Judgment on Agreed Statement of Facts and Agreed Statement of Facts; Findings of Facts and Conclusions of Law, omitting therefrom that portion thereof reciting the Agreed Statement of Facts, and inserting in place thereof, "Here followed Agreed Statement of Facts as set forth hereinbefore"; Judg-
91 ment; Clerk's Certificate to Judgment Roll; Notice of Appeal; Petition for Writ of Error; Assignment of Errors;

Order Allowing Writ of Error; Writ of Error; Citation to Writ of Error and Proof of Service; Appeal Bond and Approval.

It is further stipulated and agreed by and between the parties hereto, that the plaintiffs did appeal from the judgment rendered by the Superior Court of the City and County of San Francisco, State of California, and that said Supreme Court did assign the said case to the District Court of Appeal, First Appellate District, Division One, for hearing; that the appeal was heard by the said District Court of Appeal, and the judgment appealed from was affirmed; that thereafter plaintiffs filed a petition for a re-hearing by said District Court of Appeal, and the re-hearing asked for was denied; that thereafter plaintiffs filed a petition for a hearing before the Supreme Court of the State of California, which said petition was, by said Supreme Court, denied; that the remittitur in said case was filed on the 15th day of August, 1919, in the office of the County Clerk of the City and County of San Francisco, State of California, and ex-officio Clerk of said Superior Court of the City and County of San Francisco, State of California; and that this stipulation be included in and made a part of said record.

GEORGE LULL,
MAURICE T. DOOLING, JR.,
Attorneys for Defendants and Defendants in Error.
JOHN F. RILEY,
Attorney for Plaintiffs and Plaintiffs in Error.

San Francisco, November 7th, 1919.

91½ [Endorsed:] Original. No. —. In the District Court of Appeal of the State of California in and for the First Appel-ate District. Michael Maguire et al., Plaintiffs & Plaintiffs in Error, vs. Timothy A. Reardon et al., Defendants & Defendants in Error. Stipulation as to Record. Original. Filed Nov. 7, 1919, J. B. Martin, Clerk, By Walter S. Chisholm. George Lull, City Attorney, Attorney for Defendants, San Francisco, Cal.

92 DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE FIRST APPELLATE DISTRICT, DIVISION ONE, *ss:*

I, J. B. Martin, Clerk of above entitled court, do hereby certify that the foregoing papers, numbered from 1 to 91 inclusive, are a true, full and complete transcript of the record and proceedings in the case of Michael Maguire et al., Plaintiffs, vs. Timothy A. Reardon et al., etc., Board of Public Works, City and County of San Francisco, Defendants, as provided for by stipulation of the parties included herein, to-wit:

Complaint.
Amended Answer to Complaint.
Demurrer to Amended Answer.
Minute Order Overruling Demurrer to Amended Answer.
Minute Order Dismissing as to Fictitious Defendants.

Stipulation for Rendition of Judgment on Agreed Statement of Facts and Agreed Statement of Facts.
Findings of Facts and Conclusions of Law.
Judgment.
Clerk's Certificate to Judgment Roll.
Notice of Appeal.
Petition for Writ of Error.
Assignment of Errors.
Order Allowing Writ of Error.
Writ of Error.
Citation to writ of error and proof of service.
Appeal Bond and Approval.

And also the following:

Opinion of the District Court of Appeal of the State of California, in and For the First Appellate District, Division One.
Order denying petition for Rehearing by the District Court of Appeal.
Order denying petition for Hearing by the Supreme Court of the State of California, in Bank.
Final Judgment (Remittitur).
Return to Writ.
Certificate of Lodgment.
Stipulation as to record.

[Seal District Court of Appeal, State of California, First Appellate District.]

J. B. MARTIN,
Clerk District Court of Appeal of the State of California in and for the First Appellate District.
By WALTER S. CHISHOLM,
Deputy.

November 8th, 1919.

Endorsed on cover: File No. 27,362. California First Appellate District, Division One. District Court of Appeal. Term No. 607. Michael Maguire and C. S. Maguire, Plaintiffs in Error, vs. Timothy A. Reardon et al., as Commissioners Constituting The Board of Public Works of the City and County of San Francisco, et al. Filed November 19th, 1919. File No. 27,362.